

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of:	)	
	)	
KM Television of Flagstaff, L.L.C.	)	
v.	)	CSR-5976-M
Eagle West Cable	)	
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 10, 2002**

**Released: December 16, 2002**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. KM Television of Flagstaff, L.L.C., licensee of television broadcast station KCFG (Ch. 9), Flagstaff, Arizona ("KCFG"), filed the above-captioned complaint against Eagle West Cable ("Eagle West"), for its failure to carry KCFG on its cable systems serving Bagdad, Black Canyon City, Christopher Creek, Heber, Overgaard, Saddle Mountain, Williams, and Yarnell, Arizona. No opposition to this complaint has been received. For the reasons discussed, we grant the complaint.

**II. DISCUSSION**

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast and Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.<sup>1</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>2</sup>

3. In support of its petition, KCFG states that it formally requested carriage on Eagle West's cable systems by letter dated June 24, 2002.<sup>3</sup> Despite the fact that Eagle West was required by Section 76.61(a)(2) of the Commission's rules to respond to this request within thirty days, KCFG states that it received no response.<sup>4</sup> KCFG filed the instant complaint within sixty days of Eagle West's failure to

<sup>1</sup>8 FCC Rcd 2965, 2976-2977 (1993).

<sup>2</sup>Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e)(2) of the Commission's rules requires that a commercial television station's market be defined by Nielsen Media Research's DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

<sup>3</sup>Complaint at Exhibit C.

<sup>4</sup>*Id.* at 4; see 47 C.F.R. § 76.61(a)(2).

respond, as required by Section 76.61(a)(5) of the Commission's rules.<sup>5</sup> KCFG argues that it meets the definition of a "local commercial television station" because it is located within the same television market as Eagle West's cable systems, will deliver an adequate signal to the cable systems' principal headends, and its carriage would not increase Eagle West's copyright liability.<sup>6</sup> KCFG states that if it should be found that it does not deliver an adequate off-air signal to Eagle West's headends, it will purchase and install any additional equipment necessary to ensure the delivery of a good quality signal by whatever means necessary.<sup>7</sup>

4. We grant KCFG's complaint. We find that the unopposed representations made by KCFG demonstrate that it is a local full-power commercial television station qualified for carriage on Eagle West's systems. Under the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market as a cable operator is not entitled to carriage.<sup>8</sup> Eagle West and KCFG are both located in the Phoenix, Arizona DMA. Eagle West did not file an opposition challenging any of the assertions contained in KCFG's must carry complaint.<sup>9</sup> Consequently, we order Eagle West to carry KCFG's signal.

### III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the complaint filed by KM Television of Flagstaff, L.L.C. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended.<sup>10</sup> Eagle West Cable **IS ORDERED** to commence carriage of KCFG on its cable systems serving the communities of Bagdad, Black Canyon City, Christopher Creek, Heber, Overgaard, Saddle Mountain, Williams and Yarnell, Arizona, sixty (60) days from the date KCFG provides a good quality signal to Eagle West's principal headends.

6. **IT IS FURTHER ORDERED** that KCFG shall notify Eagle West in writing of its channel position election thirty (30) days after it provides a good quality signal to Eagle West's principal headends, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.<sup>11</sup>

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>12</sup>

### FEDERAL COMMUNICATION COMMISSION

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<sup>5</sup>47 C.F.R. § 76.61(a)(5).

<sup>6</sup>Complaint at 5; *see* 47 C.F.R. §§ 76.55(c) and 76.60.

<sup>7</sup>*Id.* at 5 and Exhibit C. KCFG states that its current signal coverage is limited off-the-air to 1 kilowatt effective radiated power ("ERP") at its Elden Mountain transmitter site due to a power restriction. KCFG states that while it has a pending application to upgrade its facilities and relocate its tower to Mormon Mountain, action on that application has been delayed due to the need for more information. Due to this delay, KCFG decided to demand carriage now and deliver its signal by alternate means. *See* Complaint at 5 n. 2.

<sup>8</sup>*See Must Carry Order*, 8 FCC Rcd at 2990.

<sup>9</sup>Eagle West apparently did reply to KCFG's election letter, suggesting that KCFG did not deliver a good quality signal. However, Eagle West did not provide any signal strength tests to support its allegation. *See* Complaint at 5. In a separate August 27, 2002 letter to KCFG's counsel, a copy of which was forwarded to the Commission, Eagle West reiterated its inability to receive KCFG's signal on any of its headends. Eagle West did, however, state its willingness to carry KCFG if it should be able to deliver a good quality signal.

<sup>10</sup>47 U.S.C. § 534.

<sup>11</sup>47 C.F.R. §§ 76.57 and 76.64(f).

<sup>12</sup>47 C.F.R. § 0.283.

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